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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,940	06/20/2000	Edward G. Tiedemann JR.	QCPA 189CIPC2	5538

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Qualcomm Incorporated
Patents Department
5775 Morehouse Drive
San Diego, CA 92121-1714

EXAMINER

CORRIELUS, JEAN B

ART UNIT PAPER NUMBER

2631

DATE MAILED: 12/08/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/597,940

Applicant(s)

TIEDEMANN ET AL.

Examiner

Jean B Corrielus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 9-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 14, 19 and 22-24 of U.S. Patent No. 6,137,840 in view of English et al US patent No. 5,528,593. US patent No. 6,137,840 discloses as shown in

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claims 1, 14, 19 and 22-24 every feature of the claimed invention but does not explicitly teach a variable data source means for providing the variable rate data frames and the frame rate signal. In the same field of endeavor, English teaches a variable data source means (60 or 32) for providing the variable rate data frames and the frame rate signal. Given that fact, it would have been obvious to one skill in the art to incorporate such a teaching pat. No. 6,137,840 in order to generate desired amount of data signal to be transmitted to selected remote station.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 recites the limitations of “ if the error information indicates a random fade condition, **then reducing the transmission power at a first predetermined rate for a first predetermined time period; ... ; if the error information indicates a genuine fade condition, maintaining the transmission power at the level of the transmission power increase**”.

However, there is no support for such limitations as claimed. In other words, the logical limitations, as recited in the claim, are not supported by the disclosure as originally filed. For

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instance, the logical limitations of “if the error information indicates a random fade condition, **then reducing the transmission power at a first predetermined rate for a first predetermined time period; ...** ; if the error information indicates a **genuine fade condition, maintaining the transmission power at the level of the transmission power increase**” can’t be found anywhere in the specification as filed. The disclosure teaches at best that, for instance, at page at page 5, lines 14-18, that the base station examines the pattern of incoming power control message to determined characteristics of the fade and use the estimated fade to control changes that need to be made. In addition, at page 12, lines 23-25, the specification teaches that the errors in a mobile come in two types. A random type and those that are the result of a change in the propagation path. Page 11, line 25-page 6, line 2, the specification further teaches that the base station increases the transmission energy to a first point B and later decreases the transmission energy to point C and continues to decrease the transmission energy to point D and the energy reduction continues until it reaches a minimum or alerted by another power adjustment request. As shown, there is **no single embodiment** teaching the logical limitations as recited in the claims.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henriksson in view of English et al US Patent No. 5,528,593.

Henriksson discloses a method and apparatus having the capability of controlling transmission power of variable rate frames of data comprising: means 4, considered broadly as the control processor means for providing a transmit power signal, a variable gain transmitter means 7 for receiving the transmit power signal and for amplifying said variable rate frames in accordance with the transmit power signal and a rate of said variable rate frames of data generated by means 6, means 6 considered as the variable data source for providing said variable rate data frames and said frames signal.

However, Henriksson fails to explicitly teach that the control processor determines a reference rate transmit power level and at least one additional transmit power level in accordance with said reference rate transmit power.

In the same field of endeavor, English et al discloses et method and apparatus for controlling power in a variable rate communication system generating a reference rate **transmit power level for a full rate transmission and at least one additional reference power level in**

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accordance with the reference rate transmit power level see col. 5, lines 12-30 and col. 6, lines 58-64.

It would have been obvious to one skilled in the art to incorporate English et al into Henriksson as it would have provided the system with the capability to transmit the signal information at different power level. Such combination would have also reduced power consumption since only parts of the frame containing data would have been transmitted (English et al col. 2, lines 1-4).

As per claim 10, Henriksson teaches a demultiplexer 5 having an input for receiving a frame quality message and the processor 4 is responsive to the frame quality message see fig. 1.

As per claim 11, it would have been obvious that the variable gain transmitter of Henriksson would have included a gain selector so as to selectively amplify the transmitted signal as to provide more amplification to the weakest signal and less amplification to the strongest signal.

Response to Arguments

7. Applicant's arguments filed 10/22/03 have been fully considered but they are not persuasive. It is alleged that English does not teach two reference rate power levels, **each with a dependent rate and each with its own loop for setting the power level of the dependent rate**. Such limitation is not fully recited in the claim. However, for argument's sake, English teaches a reference power level and a plurality of additional power levels $\frac{1}{2}$, $\frac{1}{4}$, and $\frac{1}{8}$ related to the first

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power level see for instance fig. 2 and col. 5, lines 12-30 and col. 6, lines 60-64. Where control processor 46 is configured to provide a power level for full rate, half rate, quarter rate and eighth rate.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. **Any response to this final action should be mailed to:**

Box AF

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Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 305-872-9314, (for formal communications; please mark
"EXPEDITED PROCEDURE") and (for informal or draft
communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., Sixth Floor (Receptionist).

10. Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Jean B. Corrielus whose telephone number is (703) 305-4023.

The examiner can normally be reached on Monday-Thursday from 7:00 A.M. to 5:30 P.M.

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to the Group receptionist whose telephone number is (703) 305-4700.


Jean B. Corrielus

Primary Examiner

12-6-03